

DOCKET NO.: CV 15-6054684

CRYSTAL HORROCKS, ET AL. : SUPERIOR COURT

V. : JUDICIAL DISTRICT OF NEW HAVEN

KEEPERS, INC., ET AL. : OCTOBER 2, 2020

MEMORANDUM OF DECISION RE:
PLAINTIFFS' MOTION TO CONFIRM AND DEFENDANTS' MOTION TO VACATE
ARBITRATION AWARD (#126.00 AND #127.00)

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiffs Crystal Horrocks, Yaritza Reyes, Dina Danielle Caviello, Jacqueline Green, Sugeily Ortiz and Zuleyma Bella Lopez,¹ brought suit against the defendants, Keepers, Inc. and Joseph Regensburger, for alleged violations of the relevant state and federal minimum wage and overtime laws. As alleged in the plaintiffs' complaint, each of the plaintiffs worked as an exotic dancer at Keepers Gentlemen's Club located in Milford. This establishment is owned and operated by the defendants. The plaintiffs allege that

¹ The arbitration award at issue also granted damages to Dalynna Seoung. This individual is not listed as a plaintiff in the summons or the complaint. It is unclear how she became a participant in this case. Nevertheless, as the defendants do not raise this issue, it need not be addressed by the court.

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during their time working for the defendants, they were improperly characterized as independent contractors as opposed to employees. According to the plaintiffs, this improper employment relationship has caused them, inter alia, to be unable to obtain needed workers' compensation benefits, as well as not be paid the appropriate minimum wage and overtime pay. The plaintiffs also contend they were illegally forced to pay the defendants certain gratuities that they received from customers. Accordingly, the plaintiffs' eight-count complaint alleges the following causes of action: (1) count one— failure to pay minimum wage in violation of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 206; (2) count two— failure to pay overtime in violation of the FLSA, 29 U.S.C. § 207; (3) count three— unlawful deductions from wages and/or gratuities in violation of the FLSA; (4) count four— failure to pay minimum wage in violation of General Statutes § 31-60; (5) count five— failure to pay overtime in violation of General Statutes § 31-76b; (6) count six— unlawful deductions from wages in violation of General Statutes § 31-71e; (7) count seven—unjust enrichment and (8) count eight— breach of implied contract.

On May 26, 2015, the defendants filed a motion to dismiss and/or stay this action (docket entry number 101) on the ground that the employment relationship between the parties was governed by an entertainment lease agreement that contained a mandatory

arbitration clause.² The court, *Wilson, J.*, denied the motion to dismiss (docket entry number 101.01) on October 13, 2015, but it also ordered a stay of the proceedings pending arbitration on January 4, 2016 (docket entry number 104). Following an order by this court, *Abrams, J.*, on November 29, 2016 (docket entry number 111.10) compelling arbitration, the parties proceeded to an arbitration before retired Superior Court judge Robert Holzberg. On July 18, 2019, Judge Holzberg issued his initial arbitration award wherein he determined that the plaintiffs were appropriately characterized as employees and opposed to independent contractors.³ Subsequently, on March 17, 2020, Judge Holzberg issued a

² The arbitration provision contained in the entertainment lease agreement reads in relevant part: “23. Arbitration/waiver of Class and Collective Actions/Attorney Fees and Costs. A. Binding Arbitration. Any and all controversies between the Entertainer and Club, regardless of whether such claims sound in contract, tort, and/or based upon a federal or state statu[t]e, shall be exclusively decided by binding arbitration held pursuant to and in accordance with the Federal Arbitration Act (‘FAA’), and shall be decided by a single neutral arbitrator agreed upon by the parties, who shall be permitted to award, subject only to the restrictions contained in this Paragraph 23, any relief available in court. All parties waive any right to litigate such controversies, disputes, or claims in a court of law, and waive the right to trial by jury.”

³ On July 19, 2019, the plaintiffs filed a preliminary application to confirm this arbitration award (docket entry number 114). No action was taken on it by the court.

further arbitration award⁴ where he determined, inter alia, that the entertainment lease agreement was illegal and unenforceable because it was an attempt to circumvent statutory wage and hour requirements, and as a result, the plaintiffs were entitled to be paid the appropriate minimum and overtime wage for the hours they worked for the period between April 14, 2013 to April 14, 2015.⁵ Judge Holzberg awarded the plaintiffs \$113,560.75 in damages.⁶ Judge Holzberg further denied the plaintiffs' request for double liquidated damages because he found the defendants acted with a good faith belief they were complying with the law, but he also gave the plaintiffs' \$85,000 in attorney's fees and \$2,981.16 in costs.

On March 17, 2020, the plaintiffs filed an application to confirm both the July 18, 2019 and the March 17, 2020 arbitration awards (docket entry number 126). The defendants

⁴ Judge Holzberg's March 17, 2020 arbitration award corrected an earlier award dated March 12, 2020, that contained a computation error with respect to the proper amount of damages.

⁵ Judge Holzberg did not award any damages for work undertaken before April 14, 2013 due to the applicable statute of limitations.

⁶ This total award was broken down as follows: (1) Horrocks- \$32,328.50; (2) Green- \$32,807.20; (3) Coviello- \$7,437.75; (4) Reyes- \$13,497.30; (5) Ortiz- \$17,490; (6) Lopez- \$5,000 and (7) Seoung- \$5,000.

filed a motion to vacate the arbitration awards on April 7, 2020 (docket entry number 127). The court heard oral argument remotely on both motions on August 3, 2020.

DISCUSSION

“Our Supreme Court has for many years wholeheartedly endorsed arbitration as an effective alternative method of settling disputes intended to avoid the formalities, delay, expense and vexation of ordinary litigation. . . . When arbitration is created by contract, we recognize that its autonomy can only be preserved by minimal judicial intervention. . . . Because the parties themselves, by virtue of the submission, frame the issues to be resolved and define the scope of the arbitrator’s powers, the parties are generally bound by the resulting award. . . . Since the parties consent to arbitration, and have full control over the issues to be arbitrated, a court will make every reasonable presumption in favor of the arbitration award and the arbitrator’s acts and proceedings. . . . The party challenging the award bears the burden of producing evidence sufficient to invalidate or avoid it, and only upon a showing that it falls within the proscriptions of § 52-418 of the General Statutes, or procedurally violates the parties’ agreement will the determination of an arbitrator be subject to judicial inquiry.” (Internal quotation marks omitted.) *Doctor’s Associates, Inc. v. Windham*, 146 Conn. App. 768, 774-75, 81 A.3d 230 (2013). Accordingly, under this state’s

statutory scheme governing arbitration, “[t]he court or judge shall grant such an order confirming the award unless the award is vacated, modified or corrected as prescribed in sections 52-418 and 52-419.” General Statutes § 52-417.

“Our courts have held that claims of manifest disregard of the law fall within the statutory proscription of § 52-418 (a) (4). [A]n award that manifests an egregious or patently irrational application of the law is an award that should be set aside . . . because the arbitrator has exceeded [his] powers or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made. . . . [T]he manifest disregard of the law ground for vacating an arbitration award is narrow and should be reserved for circumstances of an arbitrator’s extraordinary lack of fidelity to established legal principles.” (Internal quotation marks omitted.) *Zelvin v. JEM Builders, Inc.*, 106 Conn. App. 401, 413, 942 A.2d 455 (2008). “Under this highly deferential standard, the defendant has the burden of proving three elements, all of which must be satisfied in order for a court to vacate an arbitration award on the ground that the [arbitrator] manifestly disregarded the law: (1) the error was obvious and capable of being readily and instantly perceived by the average person qualified to serve as an arbitrator; (2) the [arbitrator] appreciated the existence of a clearly governing legal principle but decided to ignore it; and (3) the governing law alleged to have been ignored by the [arbitrator] is well defined, explicit, and

clearly applicable.” (Internal quotation marks omitted.) *Harty v. Cantor Fitzgerald & Co.*, 275 Conn. 72, 102, 881 A.2d 139 (2005).

The defendants argue that Judge Holzberg’s arbitration awards manifestly disregarded the law in three different ways. First, the defendants contend that when Judge Holzberg determined that the entertainment lease agreement was void and unenforceable as a violation of public policy, that the arbitration clause found within that contract was necessarily also rendered invalid. As the arbitrator’s powers arise out of the parties’ agreement, the defendants contend that if the underlying contract is not enforceable, then the arbitration provision found within it also becomes invalid. Second, the defendants argue that Judge Holzberg’s award of attorney’s fees must be vacated because he relied on the current version of § 31-72 as opposed to the iteration of the statute that was in existence between April, 2013 and April, 2015. According to the defendants, the earlier version of § 31-72 prohibited an award of attorney’s fees in instances where the defendants did not act in bad faith when they underpaid wages. Finally, the defendants contend that “the arbitrator disregarded the law that the defendants have the right to present evidence of the precise amount of work the plaintiffs performed.” The defendants believe it was incorrect for Judge Holzberg to rely on the oral testimony of the plaintiffs regarding how much time they worked as opposed to the defendants’ written records. Therefore, the defendants argue that

the damages awarded by Judge Holzberg were too speculative. The court will address each of these arguments individually.⁷

The defendants' first claimed basis for granting their motion to vacate is governed by the Connecticut Supreme Court's decision in *C.R. Klewin Northeast, LLC v. Bridgeport*, 282 Conn. 54, 919 A.2d 1002 (2007). In *C.R. Klewin*, the Supreme Court examined, inter alia, the issue of whether "a contract containing an arbitration clause is void ab initio on the ground of illegality falls within the exclusive jurisdiction of the court, and not the arbitration panel." *Id.*, 70. The defendant had "argue[d] that a declaration that a contract is void ab initio logically would render void an arbitration clause contained in that contract, thereby depriving the panel of subject matter jurisdiction over the dispute and the trial court of jurisdiction to confirm any resulting award." *Id.*, 70-71. Quoting the United States Supreme Court's decision in *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 126 S.Ct.

⁷ Although the plaintiffs did orally argue in opposition to the defendants' motion to vacate the arbitration awards, they did not file any written opposition to said motion. Given that it was filed before the defendants' motion to vacate, the plaintiffs' application to confirm does not set forth any substantive arguments in opposition to the defendants' positions. During the August 3, 2020 hearing before this court, however, the plaintiffs indicated their belief that the law dictates that the arbitration provision should stand even if the rest of the contract is deemed to be invalid.

1204, 163 L.Ed.2d 1038 (2006),⁸ our Supreme Court concluded that: “First, as a matter of substantive federal arbitration law, an arbitration provision is severable from the remainder of the contract. Second, unless the challenge is to the arbitration clause itself, the issue of the contract’s validity is considered by the arbitrator in the first instance. Third, this arbitration law applies in state as well as federal courts. . . . Applying those holdings, the [United States Supreme] [C]ourt concluded that, because respondents challenge the [a]greement, but not specifically its arbitration provisions, those provisions are enforceable apart from the remainder of the contract. The challenge should therefore be considered by an arbitrator, not a court.” (Citation omitted; emphasis omitted; internal quotation marks omitted.) *Id.*, 75.

C.R. Klewin Northeast, LLC and *Buckeye Check Cashing, Inc.* definitively establish that the legal validity of the underlying contract and arbitration provision are separate issues. In the present case, the plaintiffs had previously argued that the arbitration provision was unenforceable due to procedural and substantive unconscionability. Judge Wilson rejected this argument in her January 4, 2016 memorandum of decision denying the defendants’

⁸ “General Statutes § 52–408 is similar to § 2 of the federal Arbitration Act, 9 U.S.C. § 1 et seq. . . . [Therefore,] [i]n construing a Connecticut statute that is similar to federal law, [this court is] guided by federal case law.” (Citation omitted.) *Nussbaum v. Kimberly Timbers, Ltd.*, 271 Conn. 65, 73 n.6, 856 A.2d 364 (2004).

motion to dismiss/stay.⁹ Therefore, the arbitration clause of the subject contract has already been judicially declared valid and was presumptively enforceable during the arbitration proceedings. Accordingly, although Judge Holzberg later determined that the substantive portions of the entertainment lease agreement between the parties were void and unenforceable, that decision does not apply to the arbitration clause itself. Given that an arbitration provision is severable from its underlying contract and that Judge Wilson has already determined that the arbitration clause was legally enforceable, the fact that Judge Holzberg declared the entertainment lease agreement illegal does not invalidate the arbitration clause and make the case no longer arbitrable. Therefore, the court rejects this argument as a valid basis to grant the defendants' motion to vacate.

Next, the court will address the defendants' argument that the arbitration awards should be vacated because Judge Holzberg awarded attorney's fees even though he found

⁹ Specifically, Judge Wilson held that "[t]he plaintiffs have failed to present the court with specific evidence of procedural and substantive unconscionability surrounding the entertainment lease agreement. Rather, the plaintiffs rely on federal case law in jurisdictions that are less favorable to arbitration than Connecticut and not within the Second Circuit, and accordingly, are not binding nor persuasive on this court. Thus, the arbitration agreement is not procedurally or substantively unconscionable and therefore it does not violate public policy and is not void as a matter of law." *Horrocks v. Keepers, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-15-6054684-S (January 4, 2016, *Wilson, J.*) (61 Conn. L. Rptr. 599, 603). The court considers this decision the law of the case.

the defendants did not act in bad faith. The basis for this contention is that Judge Holzberg relied on the current version of § 31-72 instead of the earlier iteration that required a finding of bad faith in order to award attorney's fees.¹⁰ Importantly, however, in his March 17, 2020 arbitration award, Judge Holzberg states: "The FLSA (29 U.S.C. § 216 (b)) and Connecticut law (. . . § 31-72) permit the recovery of [attorney's] fees. Neither body of law requires a showing of willfulness for an award of [attorney's] fees." Accordingly, Judge Holzberg clearly also relied on federal law as a basis for his attorney's fees award. 29 U.S.C. § 216 (b) provides, in relevant part: "Any employer who violates the provisions of section 206 [minimum wage] or section 207 [overtime] of this title shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime

¹⁰ Prior to an amendment to § 31-72 that took effect on October 1, 2015, our Supreme Court had held that "it is well established . . . that it is appropriate for a plaintiff to recover attorney's fees, and double damages under [§ 31-72], only when the trial court has found that the defendant acted with bad faith, arbitrariness or unreasonableness." (Internal quotation marks omitted.) *State v. Lynch*, 287 Conn. 464, 475 n.10, 948 A.2d 1026 (2008). The current version of § 31-72, however, clearly states that when an employer fails to pay its employee the proper amount the employee **"Error! Main Document Only.shall** recover, in a civil action, (1) twice the full amount of such wages, with costs and such reasonable attorney's fees as may be allowed by the court, or (2) if the employer establishes that the employer had a good faith belief that the underpayment of wages was in compliance with law, the full amount of such wages or compensation, with costs and such reasonable attorney's fees as may be allowed by the court." (Emphasis added.)

compensation The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action." This statutory language was in existence during the period between April, 2013 and April, 2015. Under federal law, "[t]he payment of attorney's fees to employees prevailing in FLSA cases is mandatory. 29 U.S.C. § 216 (b). The amount of the attorney's fees, however, is within the sound discretion of the trial court." *Burnley v. Short*, 730 F.2d 136, 141 (4th Cir. 1984). The plain language of the statute does not require a showing of bad faith or wilfulness on the part of the defendants. See, e.g., *McQueen v. Licata's Seafood Restaurant*, United States District Court, Docket No. Civ. A. No. 91-1461 (E.D. La. March 30, 1992) (1992 WL 73322) (noting that "[a]n award of attorney's fees to the prevailing party in a FLSA action is mandatory" even though "one could draw sufficient inferences from . . . [the] evidence to find good faith [on the part of the defendant employer]"). Accordingly, because an award of attorney's fees is mandatory when the plaintiff prevails under 29 U.S.C. § 216 (b), the court determines that Judge Holzberg acted properly when he gave the plaintiffs attorney's fees.

Finally, the court will discuss the defendants' third argument in favor of granting their motion to vacate. Although the defendants attempt to frame this portion of their motion as an attack on the overly speculative nature of Judge Holzberg's damages

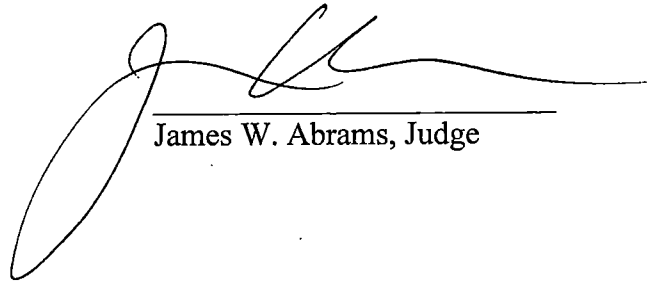
calculation, in reality, the defendants believe that Judge Holzberg erred when he credited the plaintiffs' oral testimony over certain written documentation offered by the defendants.

"Our Supreme Court has determined that in reviewing questions of fact in arbitration proceedings, a reviewing court must determine whether there is substantial evidence in the record to support the arbitrators' findings of fact and whether the conclusions drawn from those facts are reasonable. . . . The limited scrutiny with which [a court] review[s] an arbitration panel's findings of fact dictates that it is . . . [not] the function of the trial court . . . to retry the case or to substitute its judgment for that of the [arbitration panel]." (Emphasis omitted; internal quotation marks omitted.) *Enfield v. AFSCME Council 4, Local 1029*, 100 Conn. App. 470, 477, 918 A.2d 934, cert. denied, 282 Conn. 924, 925 A.2d 1105 (2007). In his March 17, 2020 arbitration award, Judge Holzberg "conclude[d] that the defendants' record keeping was inadequate and incomplete. Accordingly, in calculating [the] plaintiffs' damages I have necessarily relied on both the plaintiffs' testimony and the partial records of the defendants." With this statement, Judge Holzberg indicates that he examined the defendants' attendance records but he found that they were not completely accurate. Therefore, he also relied on the plaintiffs' oral testimony in order to determine a complete total of the number of hours that they worked. This finding is more than substantial evidence to support Judge Holzberg's damages calculations, and it is not the role of this

court to substitute its judgment for that of the arbitrator. Consequently, the court also rejects this argument as a valid basis to grant the defendants' motion to vacate.

CONCLUSION

The court hereby denies the defendants' motion to vacate the arbitration awards (#127) and it grants the plaintiffs' application to confirm same (#126) for the reasons set forth herein.



James W. Abrams, Judge